

1 **ROBERT L. BRACE** (CA Bar No.122240)
2 **HOLLISTER & BRACE**

3 A Professional Corporation
4 1126 Santa Barbara Street
Post Office Box 630
5 Santa Barbara, CA 93102
Telephone: (805) 963-6711
Facsimile: (805) 965-0329
E-Mail: hblaw@hbsb.com

6 **RICHARD W. HORTON** (NV Bar No. 1542)
7 **LIONEL SAWYER & COLLINS**

8 Suite 1100 Bank of America Plaza
9 50 West Liberty Street
10 Reno, NV 89501
Telephone: (775) 788-8666
Facsimile: (775) 788-8682
E-Mail: rhorton@lionelsawyer.com

11 Attorneys for Thomas A. Dillon, Independent
12 Fiduciary of Employers Mutual Plans

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF NEVADA**

15 Thomas A. Dillon, Independent Fiduciary
16 of Employers Mutual Plans,

17 Plaintiff,

18 v.

19 James Graf, et al.

20 Defendants.

CASE NO. CV-N-03-0119-HDM-VPC

CASE MANAGEMENT ORDER

21 TO ALL PARTIES HEREIN AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

22 IT IS HEREBY ORDERED:

23 **1. Reason for this Order:** As set forth in this Court's Order dated March 26, 2003, the
24 Court deems this matter to be complex litigation within the meaning of Section 16(c)(12) of
25 the Federal Rules of Civil Procedure. As such, this case requires a Case Management Order
26 ("CMO") to avoid placing unnecessary burdens on the Court or the litigants as allowed by
27 Section 26 of the Federal Rules of Civil Procedure. The primary areas requiring Judicial
28 oversight are discovery and settlement negotiations.

53

1 **2. Appointment of Lead Counsel for Defendant Insurance Producers:**

2 In the interest of judicial economy this court Orders that the defendant Insurance
3 Producers (excluding defendants AAA Insurance Services ("AAA") and American Benefit
4 Society ("ABS")) and their respective counsel, shall appoint "Lead Counsel" for the defendant
5 Insurance Producers. To the extent possible, Lead Counsel for the defendant Insurance
6 Producers is to act as a single voice for all other defendant Insurance Producers (excluding
7 AAA and ABS) for the purpose of filing any motions, including Motions in Limine. Lead
8 Counsel may be composed of a committee of counsel for the defendant Insurance Producers.

9 **3. Single Motion To Be Filed On Behalf Of All Defendant Insurance Producers:**

10 In the interest of avoiding repetitive motions on the same legal or factual issues, and
11 unnecessary clerical work at the Court, all defense motions shall be prepared jointly by the
12 defendant Insurance Producers. The Court's goal is to have the defendant Insurance Producers
13 work together to produce one motion for each issue to be resolved by motion. The single
14 motion shall be filed by Lead Counsel for the defendant Insurance Producers on behalf of all
15 the defendant Insurance Producers.

16 All defendant Insurance Producers shall be deemed to have joined in all motions filed
17 by Lead Counsel unless a specific Notice of Non-Joiner as to a specific motion is filed with
18 the Court and served on all parties by an individual defendant Insurance Producer. Such a
19 notice must be filed and served in advance of the hearing on the subject motion filed by Lead
20 Counsel.

21 In the event that Lead Counsel will not file a motion that is supported by counsel for
22 an individual defendant Insurance Producer, that disagreement is to be presented to the Court
23 via Ex Parte Motion seeking leave to file individual motions. Such applications must be
24 supported by a showing of good cause.

25 **4. Appointment of Mediator:**

26 The Court finds that because of the number of defendants there will most likely be a
27 very lengthy trial if the case is not settled, in whole or part. Therefore the designation of a
28

1 Mediator is appropriate. The Court appoints Robert Berry, as the Mediator pursuant to the
2 Federal Rules of Civil Procedure §§ 53, 26(F), 16(b)(6), 16(c)(6) and Local Rule 16, to mediate
3 and conduct settlement conferences in this case.

4 (a) The Mediator's address and contact information is:

5 Robert Berry
6 3701 Fairview Road
7 Reno, NV 89511
Telephone: (775) 853-3980
Fax: (775) 853-3981

8 (b) The Mediator's hourly cost is \$275.00.

9 (c) The number of hours needed for Robert Berry is estimated to be 50.

10 (d) No party has established an economic inability to pay a pro rata share
11 of the Mediator's fee.

12 (e) The Mediator's fee shall be paid one-third (1/3) by plaintiff and two-
13 thirds (2/3) by defendants.

14 (f) Mediation bills shall be sent by the Mediator to counsel for plaintiff and
15 Lead Counsel for the defendants along with a statement of activities
16 comprising each bill. Counsel for plaintiff shall forward payment for
17 one-third (1/3) of each bill within thirty days. Lead Counsel for defense
18 shall forward payment, in the form of a single check, for two-thirds (2/3)
19 of each bill within thirty days, and shall be responsible for collecting
20 proportionate contributions from the appropriate defendants.

21 (g) No party is aware of any conflict of interest with the named Mediator,
22 actual or apparent.

23 **5. Objections to CMO.** Any party appearing subsequent to the date of this Order being
24 signed shall have fifteen (15) days from the initial appearance to lodge any objections to this
25 order by ex parte appearance before the Court with proper written notice to all parties.

26 **6. Codes/Rules Govern Where CMO is Silent.** On any matter to which the CMO is silent,
27 the Federal Codes, the Federal Rules of Court and any Local Rules of Court shall be
28

1 controlling.

2 **7. Amendment to the Complaint.** Plaintiff is granted leave to file an Amendment to the
3 Complaint in this matter no later than September 12, 2003. The Amendment to the
4 Complaint shall include a Rule 23 class allegation to include as plaintiffs, individuals who
5 purchased the defective health insurance outside of any employer/employee relationship.
6 Plaintiff Dillon is to be designated the class representative.

7 **8. Responsive Pleadings by Served Defendants.** Defendants who have been served with
8 the Complaint as of the date of this Order are to file and serve Responses to the Complaint,
9 Cross-Complaints, Counter-Claims, Answers and Third Party Complaints, by October 1, 2003,
10 unless otherwise Ordered by the Court.

11 **9. Naming Additional Defendants and Cross-Defendants and Service Requirements.**

12 (i) Plaintiff may add additional defendants by an Amendment to the Complaint no
13 later than sixty (60) days from the date of this order without leave of the Court.

14 (ii) Any party naming additional defendants or cross-defendants has the obligation
15 of serving the new party with a copy of the operative Complaint, including
16 Amendments, the Case Management Order, and the Orders of the Court or
17 Magistrate.

18 (iii) Any party naming additional defendants or cross-defendants is to accomplish
19 service of process and service of relevant documents as set forth in section (ii)
20 of this paragraph, within forty-five (45) days of the relevant filing.

21 (iv) Plaintiff has an additional forty-five (45) days from the date of this Order to
22 serve defendants named in the original Complaint.

23 **10. Filing of Proofs of Service.** On or before October 15, 2003, plaintiff shall file with the
24 Court, Proof of Service of the Summons and Complaint as to each defendant who has been
25 served. Plaintiff is to provide written notice to all defendants identifying all of the defendants
26 that have been served and informing them that a copy of the service documents as to each
27 defendant is available to them at the Document Depository.

1 **11. Entry of Defaults.** Plaintiff may seek the entry of defaults against served defendants
2 on October 15, 2003, if a responsive pleading or answer is not filed, by October 1, 2003,
3 unless the court agrees to an extension.

4 **12. Hearing Re: Prove-Up of Defaults.** A Prove-Up Hearing on damages attributable to
5 defendant Insurance Producers who have defaults entered, or who have entered into stipulated
6 judgements, is to be held the day before the trial of this matter.

7 **13. Stay on Discovery.** All discovery not specifically permitted in this Order or previous
8 Orders is hereby stayed, except that any party shall be allowed to conduct non-party
9 document discovery of individuals and entities upon proper notice to all parties and shall
10 deposit such discovery in the Document Depository within thirty (30) days of its receipt. Any
11 party may apply by noticed hearing to all parties and request leave of the Court to propose
12 discovery not permitted in this Order or to enforce discovery permitted in this Order.

13 The stay of discovery is limited to discovery propounded by plaintiff on the defendant
14 Insurance Producers (excluding defendants AAA and ABS), and by the defendant Insurance
15 Producers (excluding defendants AAA and ABS) on plaintiff. The stay does not encompass
16 the propounding of discovery on or by defendants AAA and ABS, or the RICO Defendants
17 which shall be governed by the Rules set out in the Federal Rules of Civil Procedure.

18 **14. Document Depository.** The Document Depository shall be maintained at the offices
19 of Hollister & Brace, located at 1126 Santa Barbara Street, Santa Barbara, CA.

20 The purpose of the Document Depository is to reduce the costs of unnecessary court
21 filings and service of documents that would otherwise be associated with litigation involving
22 such a large number of defendants. Parties are to serve, by mail, a Notice of Deposit on all
23 other parties when a document is placed in the Document Depository. The notice will
24 provide a description of the document. Parties may then, at their own expense, order a copy
25 of the document. The procedure for logging a document in the Document Depository or
26 ordering a document that has been deposited is set forth below.

27 In the case of the deposit of an electronic version of a document, the compact
28

1 disc/floppy disk being deposited is to contain documents in an Excel or text delimited format,
2 where possible. The electronic version of a document is to be accompanied by a memo
3 describing the contents and stating the format of the electronic document.

4 To place a document in the Document Depository, the document, or in the case of an
5 electronic version of a document (compact disc or floppy cisk) is to be mailed via Certified
6 First Class Mail, or sent by bonded courier to:

7 Victoria Munoz
8 Dillon Document Depository Administrator
9 Hollister & Brace
10 P.O. Box 630
11 Santa Barbara, CA 93102
12 Tel: (805) 963-6711
13 Fax: (805) 965-0329

14 To order a document, each party must first open a coping account with:

15 Matt Curry
16 Branch Manager
17 Kinko's Copy Center, Downtown
18 1030 State Street
19 Santa Barbara, CA 93101
20 Tel: (805) 966-2700
21 Fax: (805) 966-0997

22 Document orders are to be faxed or mailed to the Document Depository
23 Administrator who will process the order, send the document or compact disk/floppy disk out
24 for copying and arrange for shipping to the ordering defendant. The ordering defendant's
25 account at Kinko's will be billed directly for copying and shipping fees. Unless the order
26 indicates otherwise, all copies will be sent to the ordering defendant via First Class U.S. Mail.

27 **15. Allowable Discovery.** The following discovery is not stayed pursuant to this order:

28 (i) Allowable document production: All parties to the stay on discovery shall
deposit in the Document Depository, true and correct copies of all relevant, non-privileged
documents as described in Exhibit "1" to the CMO by December 1, 2003 or within forty-five
(45) days of their appearance in this action, whichever is later.

The party(ies) shall use the first three letters of the party(ies)' name followed by the
applicable Bates stamp numbers. In the event of duplicative letters amongst the parties, each

1 party shall adopt a three-letter combination sufficient to distinguish it from other parties in the
2 action.

3 In the case of the deposit of an electronic version of a document, the required
4 accompanying memo describing the contents and stating the format of the electronic
5 document shall be bated stamped.

6 The deposit of documents in the Document Depository shall be accompanied by a
7 verified "Notice of Compliance", signed by the party, or counsel to the party, which shall be
8 served on all other parties, stating a general description of the documents produced, their
9 Bates-stamped numbers, and the date of deposit. Any party not depositing all documents,
10 identified in Exhibit "1", in its possession, custody or control, shall, in the "Notice of
11 Compliance":

12 (a) Identify the document(s) withheld with sufficient particularity as required
13 by the Federal Rules of Civil Procedure, and

14 (b) State the basis in the form of a privilege log for refusing to produce such
15 document(s), including the privilege or doctrine upon which non-disclosure is based.

16 The parties to the stay on discovery have a continuing obligation to deposit all non-
17 privileged documents discovered after initial production under the same procedures outline
18 above.

19 The parties are hereby instructed to produce any spreadsheet or database over five
20 pages in length in electronic form wherever possible, via the procedure set forth above, in
21 conjunction with the deposit of a hard copy.

22 (ii) Allowable Written Discovery

23 (a) Written Discovery to Develop Claims Information.

- 24 (1) Court Ordered Interrogatories: The court in this matter
25 previously ordered that all defendant Insurance Producers were
26 to respond to the Court Ordered Interrogatories attached hereto
27 as Exhibit "2" within forty-five (45) days after service of process.
28

1 As to those defendants who have not complied with the Court's
2 previous Order, responses are now due no later than October 1,
3 2003.

4 A Notice of Compliance summarizing the materials
5 submitted to the Document Depository is to be served on all
6 parties on the date referenced.

- 7 (2) Preliminary Unpaid Claims Report. Plaintiff, based on the
8 available information, is to prepare and serve each defendant
9 Insurance Producer with a Preliminary Unpaid Claims Report on
10 or before November 1, 2003.

11 The Preliminary Unpaid Claims Report shall be prepared
12 by plaintiff based on all available information. It shall consist of:
13 a list of the clients attributable to the sales by the defendant
14 Insurance Producer; a list of up/down line agents related to the
15 defendant Insurance Producer; a list of unpaid claims as to each
16 participant or individual who purchased the insurance from or
17 through the defendant Insurance Producer; and, a total of those
18 unpaid claims. A copy of each Preliminary Unpaid Claims
19 Report shall be deposited in the Document Depository.

20 This Preliminary Unpaid Claims Report is to be
21 accompanied by: a Request for Admissions requiring each
22 defendant to admit, deny and/or supplement the accuracy of the
23 information contained in the Preliminary Unpaid Claims Report;
24 and, a Special Interrogatory requiring the defendant to recite all
25 facts to support any denial of the accuracy of the information
26 contained in the Preliminary Unpaid Claims Report.

27 //

- 1 (3) Defendants' Responses: Defendants' Responses to the Request
2 for Admissions and the Special Interrogatory relating to the
3 Preliminary Unpaid Claims Report are to be deposited in the
4 Document Depository no later than December 1, 2003.

5 The cumulative data received from each defendant
6 Insurance Producer is expected to be vast. Accordingly,
7 wherever possible, defendant Insurance Producers are ordered to
8 produce the materials for amending the Preliminary Unpaid
9 Claims Report electronically, in a format consistent with the
10 Document Depository instructions above.

11 A Notice of Compliance summarizing the materials
12 submitted to the Document Depository is to be served on all
13 parties on the date referenced.

14 The parties have a continuing obligation to supplement
15 responses as relevant information is obtained.

- 16 (4) Final Unpaid Claims Report: Plaintiff will prepare a Final Unpaid
17 Claims Report based on defendants' responses to the Special
18 Interrogatory and the Request for Admissions. The Final Unpaid
19 Claims Report shall be served on each respective defendant no
20 later than February 14, 2004, and a copy shall be deposited in
21 the Document Depository.

22 A Notice of Compliance summarizing the materials
23 submitted to the Document Depository is to be served on all
24 parties on the date referenced.

25 The parties have a continuing obligation to supplement
26 responses as relevant information is obtained.

27 //

1 (5) Final Unpaid Claims Report Alteration Procedure: Plaintiff is not
2 precluded from seeking leave of Court to add monetary damages
3 beyond the scope of the Final Unpaid Claims Report. In the
4 event leave is granted, defendants are not precluded from
5 seeking to review the basis for same. Except pursuant to a
6 stipulation or for good cause shown, plaintiff shall not claim at
7 trial any damages for unpaid claims not included in the Final
8 Unpaid Claims Report.

9 (6) Access to All Unpaid Claims Reports: The defendant Insurance
10 Producers may order Unpaid Claims Report information
11 concerning any other defendant Insurance Producer from the
12 Document Depository.

13 (b) General Provisions Re: Claims Development. The following provisions
14 are applicable to all the previous paragraphs controlling the written
15 discovery to develop claims information:

16 (1) Service: When a new party is served, a copy of their Preliminary
17 Unpaid Claims Report, shall be provided with service of the
18 Complaint or within ten (10) days of the party's appearance.

19 (2) Confidentiality: To the extent that Unpaid Claims Reports and
20 other documentation contain confidential medical records, this
21 information is protected under the Health Insurance Portability
22 and Accountability Act of 1996 ("HIPAA"), and all parties are to
23 ensure compliance with same.

24 (c) Factual Contentions. Attached hereto as Exhibit "3" is a Contention
25 Interrogatory requiring each defendant Insurance Producer to provide
26 factual contentions supporting their denial of the allegations in the
27 Complaint. Responses to the Contention Interrogatory are to be
28

1 deposited in the Document Depository no later than December 1, 2003.

2 A Notice of Compliance summarizing the materials submitted to
3 the Document Depository is to be served on all parties on the date
4 referenced.

5 The parties have a continuing obligation to supplement responses
6 as relevant information is obtained.

- 7 (d) Special Interrogatories Regarding E&O Insurance: All defendant
8 Insurance Producers shall deposit in the Document Depository
9 responses to the Special Interrogatories Regarding E&O Insurance,
10 Exhibit "4", no later than December 1, 2003.

11 A Notice of Compliance summarizing the materials submitted to
12 the Document Depository is to be served on all parties on the date
13 referenced.

14 The parties have a continuing obligation to supplement responses
15 as relevant information is obtained.

- 16 (e) Witness List and Witness Reports: All parties are Ordered to make Rule
17 26 Disclosures regarding witnesses. Specifically, each defendant
18 Insurance Producer is to deposit in the Document Depository a
19 statement that identifies each witness that may be called at trial, and
20 that summarizes the substance of testimony to be offered by each
21 witness. The statement shall also include a discussion regarding the
22 documents relied upon in the development of the testimony. Those
23 documents shall be identified and produced to the Document
24 Depository along with all witness reports.

25 As to percipient witnesses, the Rule 26 Disclosure is to be
26 deposited on December 1, 2003. As to expert witnesses, the Rule 26
27 Disclosure, including Rule 26(a)(2) relating to expert witnesses, shall be
28

1 deposited on December 1, 2003, in conjunction with the First
2 Designation of Experts, and again on January 15, 2004, in conjunction
3 with the Second Expert Designation.

4 In conjunction with each Rule 26 Disclosure, a Notice of
5 Compliance summarizing the materials submitted to the Document
6 Depository is to be served on all parties on the dates referenced.

7 The parties have a continuing obligation to supplement responses
8 as relevant information is obtained.

9 (iii) Allowable Oral Discovery.

10 Depositions: Depositions are to be conducted pursuant to FRCP 26 and
11 FRCP 30(a).

12 In order to reduce the costs of copying, original transcripts and videotape recordings
13 of depositions are to be deposited in the Document Depository. The requirement of filing the
14 original with the court is waived. Copies may be ordered by all parties from the Document
15 Depository Administrator. Plaintiff is to make all original deposition transcripts and videotapes
16 available at trial.

17 **16. MEDIATION/SETTLEMENT CONFERENCES**

18 (i) Settlement Demands. Plaintiff shall serve all defendant Insurance Producers
19 with a written demand, including costs, no later than twenty-eight (28) days before the First
20 Mediation Session. These settlement demands are for Mediation purposes only and are
21 protected by all applicable Federal Rules of Evidence concerning settlement, including but not
22 limited to Federal Rules of Evidence, Article IV, Rule 408.

23 (ii) Protocol. All participants must negotiate in good faith. Unless excused by the
24 Mediator or the Court, each party is to appear at each Mediation session with its insurance
25 representative(s) or other person(s) who have full settlement authority. As to any claim that
26 is covered by insurance, the insurance carrier's representative for any insured party must be
27 present and have full authority to settle up to the amount of the plaintiff's last demand or
28

1 policy limits, whichever is less, without further consultation.

2 (iii) Payment of Mediator Fees. The fees of the Mediator shall be paid as follows:
3 One-third (1/3) by plaintiff and two-thirds (2/3) by Lead Counsel for the defendant Insurance
4 Producers.

5 All Mediation invoices are to be paid within thirty (30) days. Lead Counsel for the
6 defendant Insurance Producers shall issue one single check in an amount equal to two-thirds
7 of each mediation invoice on behalf of all defendant Insurance Producers. Likewise, Plaintiffs
8 counsel shall issue a single payment in an amount equal to one-third of each invoice.

9 Lead Counsel for the defendant Insurance Producers shall be solely responsible for
10 apportioning the invoice among, and collecting contributions from, the appropriate defendant
11 Insurance Producers. This collection of contributions may be either in advance of the
12 payment, or later, in which case the collection shall serve to reimburse Lead Counsel for the
13 defendant Insurance Producers. Disputes regarding the apportionment of mediation costs are
14 to be presented to the Court. Notwithstanding the foregoing, Lead Counsel for the defendant
15 Insurance Producers and counsel for Plaintiff are responsible for forwarding their respective
16 payments for mediation services within thirty (30) days.

17 Any party who enters after the implementation of the CMO and who is dismissed from
18 and/or settles out of the action shall immediately notify the Mediator in writing of the date it
19 entered or was dismissed or the date it settled. Any such party will be responsible for its
20 proportionate share of fees incurred until such written notice is received by the Mediator.

21 (iv) Mediation Schedule: All mediation sessions/settlement conferences are to be
22 scheduled as set forth on Exhibit "5", or as otherwise Ordered by the Court or by the
23 Magistrate, or, as agreed upon by the Mediator and the parties.

24 **17. MISCELLANEOUS PROVISIONS**

25 (i) Service List. All parties to this action are directed to provide facsimile numbers,
26 telephone numbers and e-mail addresses of their service lists and service lists are to be
27 modified or augmented as necessary.

(ii) Relief from Orders. Any party, upon application to the Court, may seek relief from any provision in this order.

(iii) The Magistrate and Mediator are not to be copied with communications between the parties unless otherwise directed by the Magistrate, Mediator or the Court.

(iv) The Court is not to be copied with letters between the parties or between a party and the Mediator.

18. COURT-RELATED DATES

All dates set forth in this Order are subject to further orders of the Court as circumstances dictate. The following dates are hereby scheduled:

<u>ACTION</u>	<u>DATE</u>
Pre-Trial Conference:	8/26/03
Plaintiff Files and Discoveries by Mail Amendment to Complaint with Rule 23 class allegations:	9/12/03
Defendants Respond to Complaint and Amendment(s):	10/1/03
Defendants Respond to Court Ordered Interrogatories Identifying Clients and Agency Relationships:	10/1/03
Plaintiff Files Proofs of Service of Summons and Complaint:	10/15/03
Defaults Entered by plaintiff against defendants who have been served and failed to respond by 10/1/03:	10/15/03
Plaintiff Provides Each Defendant With Preliminary Unpaid Claims Report and List of His/Her Clients along with Request for Admission/Special Interrogatory:	11/1/03
Rule 26 Disclosures by all Parties, Including: -Respond to Request for Admission/Special Interrogatory Relating to Preliminary Unpaid Claims Report -Document Production	12/1/03

1	Plaintiff Files Motion for Class Certification:	12/1/03
2		
3	Defendants Respond to Special Interrogatories	
4	Regarding E&O Insurance:	12/1/03
5	Defendants Respond to Contention	
6	Interrogatories:	12/1/03
7	All Parties Identify Percipient Witnesses	
8	-Deposit Rule 26 Disclosure as to all	
9	Witnesses:	12/1/03
10	Expert Designation #1	
11	-Deposit Rule 26 Disclosure as to Expert	
12	Witnesses in Document Depository:	12/1/03
13	Meet and Confer Regarding depositions:	1/15/04
14	First Mediation Session in Reno at a location to be	
15	determined by the Mediator:	1/15/04
16	Expert Designation #2	
17	-Deposit Rule 26 Disclosure as to Expert	
18	Witnesses:	1/15/04
19		
20	Plaintiff Provides Each Defendant With Final	
21	Unpaid Claims Report and List of His/Her Clients:	2/14/04
22	Second Mediation Session in Reno:	2/28/04
23	Third Mediation Session in Reno:	4/15/04
24	All Parties File Interim Status Report:	4/15/04
25	Percipient Witness Depositions	
26	(Early May Through Late June '04):	5/1/04
27	Expert Witness Depositions (July '04):	7/1/04
28	Discovery Cut-Off:	8/2/04
	Motion Cut-Off:	9/1/04
	Fourth Mediation Session in Reno:	9/15/04
	File Joint Pre-Trial Order:	9/27/04

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

File Motions in Limine:	9/27/04
Trial Readiness Conference:	9/27/04
Jury Fees Posted:	9/28/04
Prove Up Hearing Regarding Defaults:	10/26/04
Trial Call:	10/27/04

A SUMMARY OF ALL DATES AND DEADLINES IS ATTACHED AS EXHIBIT "5"

Reviewed and accepted:

Dated: _____
Mediator

ORDER

Having read and approved the Case Management Order in this matter, it is hereby made the order of this Court.

IT IS SO ORDERED.

Dated: _____
United States District Judge

EXHIBIT "1"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Thomas A. Dillon, Independent Fiduciary
of Employers Mutual Plans,

Plaintiff,

v.

James Graf, et al.

Defendants.

CASE NO. CV-N-03-0119-HDM-VPC

DOCUMENTS TO BE DEPOSITED INTO
COURT-ORDERED DOCUMENT
DEPOSITORY

PROPOUNDING PARTY:

PLAINTIFF DILLON

RESPONDING PARTY:

DEFENDANT INSURANCE PRODUCER

TO ALL PARTIES HEREIN AND THEIR RESPECTIVE ATTORNEYS OF RECORD:
PURSUANT TO THE CASE MANAGEMENT ORDER ISSUED BY JUDGE McKIBBEN, U.S.
DISTRICT COURT JUDGE, YOU ARE HEREBY ORDERED TO PRODUCE DOCUMENTS AS
FOLLOWS:

On or before December 1, 2003, you are ordered to produce to the Document
Depository, located at 1126, Santa Barbara Street, Santa Barbara, CA, the documents described
below. Upon your compliance with this Order, you must serve a "Notice of Compliance" on
all parties.

A. DEFENDANTS ARE TO PRODUCE:

1. Any and all non-privileged documents relevant to the Allegations in the
Complaint, including, but not limited to:

- (i) Insurance Producer contracts authorizing the solicitation of the subject health
insurance;
- (ii) Applications for health insurance executed by client(s);
- (iii) Policy and Plan benefit documents, including summaries;
- (iv) Commission (or fee) invoices and commission checks or summaries thereof;

- 1 (v) Advertisement and Solicitation Materials regarding the subject health insurance;
2 (vi) Memoranda and Correspondence regarding investigations performed prior to
3 the attempted placement of the subject insurance;
4 (vii) Memoranda and Correspondence regarding investigations performed after the
5 attempted placement of the subject insurance;
6 (viii) Correspondence to and from clients and all others regarding the alleged health
7 insurance; and,
8 (ix) All documents regarding unpaid claims of clients.
9 2. Any and all documents related to the defendant Insurance Producer's E&O
10 insurance coverage for any claim asserted in the case, regardless of whether coverage has
11 been reserved or denied by any E&O insurance company.
12 3. Any and all documents subpoenaed from third parties as required by this order.

13 **B. PLAINTIFF TO PRODUCE:**

- 14 1. Any and all non-privileged documents related to the subject matter alleged in
15 the Complaint.

16
17
18 **NOTE:**

19 **A VERIFICATION SIGNED BY THE PARTY UNDER PENALTY OF PERJURY MUST**
20 **ACCOMPANY THE DOCUMENT PRODUCTION**
21
22
23
24
25
26
27
28

EXHIBIT "2"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Thomas A. Dillon, Independent Fiduciary
of Employers Mutual Plans,

Plaintiff,

v.

James Graf, et al.

Defendants.

CASE NO. CV-N-03-0119-HDM-VPC

COURT-ORDERED INTERROGATORIES
REGARDING IDENTITY OF CLIENTS

PROPOUNDING PARTY:

PLAINTIFF DILLON

RESPONDING PARTY:

DEFENDANT INSURANCE PRODUCER

TO ALL PARTIES HEREIN AND THEIR RESPECTIVE ATTORNEYS OF RECORD:
PURSUANT TO THE CASE MANAGEMENT ORDER ISSUED BY JUDGE McKIBBEN, U.S.
DISTRICT COURT JUDGE, YOU ARE HEREBY ORDERED TO RESPOND TO THE COURT-
ORDERED INTERROGATORIES AS FOLLOWS:

On or before October 1, 2003, you are ordered to provide full and complete responses
to the Court-Ordered Interrogatories below. On that date, responses shall be deposited in the
Document Depository, located at 1126, Santa Barbara Street, Santa Barbara, CA. Upon your
compliance with this Order, you must serve a "Notice of Compliance" on all parties.

Interrogatory No. 1

Please identify each individual, Employers Mutual Plan, employer, employee and/or
participant (hereinafter collectively referred to as "client") who purchased the subject
insurance by or through you, the Defendant Insurance Producer.

Interrogatory No. 2

As to each client, provide their address, phone number and social security number.

Interrogatory No. 3

1 As to each client, provide their inception date, termination date and the amount of
2 premiums paid.

3 Interrogatory No. 4

4 Identify each Insurance Producer with whom you, the responding Insurance Producer,
5 shared a commission override or had a commission override agreement.

6
7 **NOTE:**

8 **A VERIFICATION SIGNED BY THE PARTY UNDER PENALTY OF PERJURY MUST**
9 **ACCOMPANY THE RESPONSES TO THE COURT-ORDERED INTERROGATORIES**
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT "3"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Thomas A. Dillon, Independent Fiduciary
of Employers Mutual Plans,

Plaintiff,

v.

James Graf, et al.

Defendants.

CASE NO. CV-N-03-0119-HDM-VPC

CONTENTION INTERROGATORIES

PROPOUNDING PARTY:

PLAINTIFF DILLON

RESPONDING PARTY:

DEFENDANT INSURANCE PRODUCER

TO ALL PARTIES HEREIN AND THEIR RESPECTIVE ATTORNEYS OF RECORD:
PURSUANT TO THE CASE MANAGEMENT ORDER ISSUED BY JUDGE McKIBBEN, U.S.
DISTRICT COURT JUDGE, YOU ARE HEREBY ORDERED TO RESPOND TO THE
CONTENTION INTERROGATORIES AS FOLLOWS:

On or before December 1, 2003, you are ordered to provide full and complete
responses to the Contention Interrogatories below. On that date, responses shall be deposited
in the Document Depository, located at 1126, Santa Barbara Street, Santa Barbara, CA. Upon
your compliance with this Order, you must serve a "Notice of Compliance" on all parties.

CONTENTION INTERROGATORY

DEFINITIONS

Words in CAPITALS in these interrogatories are defined as follows:

A. PERSON includes a natural person, firm, association, organization, partnership,
business, trust, corporation, or public entity and their last known street address, including the
city, state, and zip code and their last known phone number.

B. DOCUMENTS means writing, as defined in the Federal Rules of Evidence, and

1 includes the original or a copy of handwriting, typewriting, printing, photostating,
2 photographing, and every other means of recording upon any tangible thing and form of
3 communicating or representation, including letters, words, pictures, sounds, or symbols, or
4 combinations of them including email correspondence, written memoranda, correspondence,
5 notes of communications and any of the above in electronic format.

6 C. SUBJECT INSURANCE means the alleged health insurance that was to be
7 procured on behalf of the participants and individuals as alleged in the Complaint and the
8 Amendment(s) to the Complaint.

9 **INTERROGATORIES**

10 1. State all facts that support the denials of the Allegations contained in Plaintiff's
11 Complaint as set forth in your Answer.

12 2. For each fact set forth in response to the preceding interrogatory, name all
13 PERSONS with any knowledge relating to such facts and identify all DOCUMENTS that
14 evidence or reflect such facts (including the location and custodian of each such document).

15 3. For each fact set forth in response to the preceding interrogatory, name all
16 PERSONS with any knowledge relating to such facts and identify all DOCUMENTS that
17 evidence or reflect such facts (including the location and custodian of each such document).

18 **NOTE:**

19
20 **A VERIFICATION SIGNED BY THE PARTY UNDER PENALTY OF PERJURY MUST**
21 **ACCOMPANY THE RESPONSES TO THE CONTENTION INTERROGATORIES**
22
23
24
25
26
27
28

EXHIBIT "4"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Thomas A. Dillon, Independent Fiduciary
of Employers Mutual Plans,

Plaintiff,

v.

James Graf, et al.

Defendants.

CASE NO. CV-N-03-0119-HDM-VPC

SPECIAL INTERROGATORIES
REGARDING E&O INSURANCE

PROPOUNDING PARTY:

PLAINTIFF DILLON

RESPONDING PARTY:

DEFENDANT INSURANCE PRODUCER

TO ALL PARTIES HEREIN AND THEIR RESPECTIVE ATTORNEYS OF RECORD:
PURSUANT TO THE CASE MANAGEMENT ORDER ISSUED BY JUDGE McKIBBEN, U.S.
DISTRICT COURT JUDGE, YOU ARE HEREBY ORDERED TO RESPOND TO THE SPECIAL
INTERROGATORIES REGARDING E&O INSURANCE AS FOLLOWS:

On or before December 1, 2003, you are ordered to provide full and complete
responses to the Special Interrogatories Regarding E&O Insurance below. On that date,
responses shall be deposited in the Document Depository, located at 1126, Santa Barbara
Street, Santa Barbara, CA. Upon your compliance with this Order, you must serve a "Notice
of Compliance" on all parties.

SPECIAL INTERROGATORIES REGARDING E&O INSURANCE

(If more than one carrier, answer for each potential carrier.)

1. NAME OF PARTY.
2. NAME AND ADDRESS OF TRIAL ATTORNEY.
3. NAME OF E&O INSURANCE CARRIER(S).
4. IS THE CARRIER EXCESS OR PRIMARY?
5. (a) Policy No(s):

- 1 (b) Policy Type:
2 (c) Policy limits for each type of coverage contained in policy.
3 (d) Dates of each coverage for each policy.
4 (e) Provide the estimated amount of remaining aggregate coverage for each policy.
5 6. IS THE CARRIER DEFENDING WITH OR WITHOUT A RESERVATION OF RIGHTS?
6 (a) Please explain if there is a reservation of rights.
7 (b) Please indicate stated basis for reservation of rights (a brief statement).
8 7. HAS COVERAGE BEEN DENIED?
9 (a) Please explain if coverage has been denied.
10 (b) Please indicate stated basis for denial of coverage.
11 8. DATE COVERAGE WAS DENIED.
12 9. NAME, ADDRESS AND TELEPHONE NUMBER OF INSURANCE REPRESENTATIVE
13 RESPONSIBLE FOR FILE
14 10. PROVIDE THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE PRESENT
15 CUSTODIAN OF THE POLICY(S).
16

17 **NOTE:**

18 **A VERIFICATION SIGNED BY THE PARTY UNDER PENALTY OF PERJURY MUST**
19 **ACCOMPANY THE RESPONSES TO THE SPECIAL INTERROGATORIES REGARDING**
20 **E&O INSURANCE**
21
22
23
24
25
26
27
28

EXHIBIT "5"

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

Thomas A. Dillon, Independent Fiduciary
of Employers Mutual Plans,

Plaintiff,

v.

James Graf, et al.

Defendants.

CASE NO. CV-N-03-0119-HDM-VPC

**SUMMARY OF COURT ORDERED
DEADLINES AND CASE DATES**

TO ALL PARTIES HEREIN AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PURSUANT TO THE CASE MANAGEMENT ORDER ISSUED BY JUDGE McKIBBEN, U.S.
DISTRICT COURT JUDGE, YOU ARE HEREBY ORDERED:

To comply with all of the dates and deadlines established by the Case Management
Order as set forth herein.

SUMMARY OF DEADLINES AND CASE DATES

<u>ACTION</u>	<u>DATE</u>
Pre-Trial Conference:	8/26/03
Plaintiff Files and Discoveries by Mail Amendment to Complaint with Rule 23 class allegations:	9/12/03
Defendants Respond to Complaint and Amendment(s):	10/1/03
Defendants Respond to Court Ordered Interrogatories Identifying Clients and Agency Relationships:	10/1/03
Plaintiff Files Proofs of Service of Summons and Complaint:	10/15/03
Defaults Entered by plaintiff against defendants who have been served and failed to respond by 10/1/03:	10/15/03

1		
2	Plaintiff Provides Each Defendant With	
3	Preliminary Unpaid Claims Report and List of	
4	His/Her Clients along with Request for	
5	Admission/Special Interrogatory:	11/1/03
6	Rule 26 Disclosures by all Parties, Including:	
7	-Respond to Request for Admission/Special	
8	Interrogatory Relating to Preliminary	
9	Unpaid Claims Report	
10	-Document Production	12/1/03
11	Plaintiff Files Motion for Class Certification:	12/1/03
12		
13	Defendants Respond to Special Interrogatories	
14	Regarding E&O Insurance:	12/1/03
15	Defendants Respond to Contention	
16	Interrogatories:	12/1/03
17	All Parties Identify Percipient Witnesses	
18	-Deposit Rule 26 Disclosure as to all	
19	Witnesses:	12/1/03
20	Expert Designation #1	
21	-Deposit Rule 26 Disclosure as to Expert	
22	Witnesses in Document Depository:	12/1/03
23	Meet and Confer Regarding depositions:	1/15/04
24	First Mediation Session in Reno at a location to be	
25	determined by the Mediator:	1/15/04
26	Expert Designation #2	
27	-Deposit Rule 26 Disclosure as to Expert	
28	Witnesses:	1/15/04
	Plaintiff Provides Each Defendant With Final	
	Unpaid Claims Report and List of His/Her Clients:	2/14/04
	Second Mediation Session in Reno:	2/28/04
	Third Mediation Session in Reno:	4/15/04
	All Parties File Interim Status Report:	4/15/04
	Percipient Witness Depositions	
	(Early May Through Late June '04):	5/1/04

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Expert Witness Depositions (July '04):	7/1/04
Discovery Cut-Off:	8/2/04
Motion Cut-Off:	9/1/04
Fourth Mediation Session in Reno:	9/15/04
File Joint Pre-Trial Order:	9/27/04
File Motions in Limine:	9/27/04
Trial Readiness Conference:	9/27/04
Jury Fees Posted:	9/28/04
Prove Up Hearing Regarding Defaults:	10/26/04
Trial Call:	10/27/04